



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Donald Driver Motors, LLC

Case No. DOT-15-0007

FINAL DECISION

On November 26, 2014, Jean Janz filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Donald Driver Motors, LLC. The claim along with documents gathered by the Department during its investigation of the claim were referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on April 20, 2015. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Jean Janz
N2361 Highway 67
Campbellsport, WI 53010

Richard Jungen
Donald Driver Motors, LLC
4711 N. 100th Street
Wauwatosa, WI 53225

Thomas Burns, Sr.
8237 Woody Lane
Ixonia, WI 53036-9551

Donald Driver
Donald Driver Motors, Inc.,
1940 Ledgeview Road
DePere, WI 54115

Universal Underwriters Insurance Group
Bond Department
7045 College Blvd.
Overland Park, KS 55211-1523

FINDINGS OF FACT

1. Donald Driver Motors, LLC, (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 113 East Main Street, Campbellsport, Wisconsin. The dealership was put out of business effective November 30, 2011.

2. The Dealer has had a surety bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since January 3, 2008. (Bond #824044 from Universal Underwriters Insurance Group)

3. On May 8, 2008, John Jacob and Jean Marie Janz (the Janzs) purchased a 2004 Cadillac Escalade, vehicle identification number 3GYFK66N04G335099, from the Dealer. The Janzs paid \$23,999.00, not including taxes and registration fees, for the vehicle. The vehicle came with a limited warranty administered by the Dealer. The warranty covered the powertrain of the vehicle and was for an unlimited term. The warranty has a \$100.00 deductible.

4. The Janzs have experienced continuing mechanical problems with the vehicle which should have been covered under the warranty, however; the Janzs have been unable to have the repairs made under the warranty because the Dealer has closed. Jean Janz has filed complaints with the Department against the Dealer. The investigator from the Department contacted Richard Jungen, the corporate secretary for the Dealer, about Ms. Janz's complaints. Mr. Jungen informed the investigator that the Dealer was unable to pay for repairs for the Janzs' vehicle. This response has been relayed to Ms. Janz.

5. Jean Janz filed claims against the surety bond of the Dealer seeking reimbursement for the cost of repairs that should have been covered by the warranty. The first claim was filed on May 1, 2013. This claim was approved in the amount of \$432.20 (TR-13-0006). Ms. Janz filed a second claim against the surety bond of the Dealer on March 3, 2014. This claim was approved in the amount of \$2,527.06 (TR-14-0008). Mechanical problems with the vehicle remain. Ms. Janz has been in contact with Universal Underwriters Insurance Group and was directed to have the vehicle checked out and to file a claim for any additional repair work that needs to be done.

6. Ms. Janz took the vehicle to Heineke Auto in Campbellsport. Diagnostic tests were performed and it was discovered that there were problems with the rear drive shaft, engine bolts, and front differential of the vehicle. Ms. Janz obtained an estimate to repair these items.

7. On November 26, 2014, Jean Janz filed a claim against the surety bond of the Dealer in the amount of \$\$2,318.26. The claim is itemized as \$47.48 for diagnosis of the problems, \$457.34 to “replace manifold to engine bolts/gasket,” \$89.99 to “replace rear driveshaft universal joint,” and \$1,723.55 to “replace front differential.”

8. The Dealer’s failure to repair the Janzs’ vehicle under the terms of the warranty constitutes a violation of Wis. Admin Code § Trans 130.06(10)(a).¹ A violation of Wis. Admin Code § Trans 130.06(10)(a), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles).

9. The Janzs sustained a loss as the result of an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Jean Janz has provided documentation to support claims totaling \$2,218.36, the amount that would have been covered by the warranty that the Dealer provided to the Janzs with the purchase of the vehicle they bought from the Dealer. The allowable claim is calculated as follows: \$47.48 for diagnosis of the problem and \$2,270.88 for the repairs less the \$100.00 deductible.

10. Jean Janz’s claim arose in November of 2011. Although the Janzs did not attempt to use the warranty until 2013, the Dealer’s violation of Wis. Admin Code § Trans 139.06(10)(a) occurred when it closed and did not make any arrangements to honor the terms of the warranty. The bond claim was filed within three years of the ending date of the one-year period the bond issued by Universal Underwriters Insurance Group was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

¹ Wis. Admin Code § Trans 139.06(10)(a) provides that “It is an unfair practice and prohibited for a warrantor to fail to service or repair a motor vehicle in accordance with the terms and conditions of the warranty or service contract.”

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. *[recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)].*

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. In this case, the Dealer violated Wis. Admin Code § Trans 130.06(10)(a). A violation of Wis. Admin Code § Trans 130.06(10)(a), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm). Wis. Stat. § 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Jean Janz sustained a loss as a result of this violation.

CONCLUSIONS OF LAW

1. Jean Janz's claim arose in November of 2011, when the Dealer closed without making any arrangements to honor the terms of the warranty it had given to the Janzs. The Janzs discovered the violation when they experienced mechanical problems with the vehicle they purchased from the Dealer and the Dealer failed to repair the vehicle in accordance with the terms of the warranty. The surety bond issued to the Dealer by Universal Underwriters Insurance Group covers a one-year period commencing on January 3, 2011. The claim arose during the period covered by the surety bond.

2. Jean Janz filed a claim against the motor vehicle dealer bond of the Dealer on November 26, 2014. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Jean Janz sustained a loss as the result of an act of the Dealer that would be grounds for the suspension or revocation of the Dealer's motor vehicle dealer license. Ms. Janz has submitted documentation to support a claim in the amount of \$2,218.36.

4. The Division of Hearings and Appeals has authority to issue the following orders.

ORDER

The claim filed by Jean Janz against the motor vehicle dealer bond of Donald Driver Motors, LLC, is APPROVED in the amount of \$2,218.36. Universal Underwriters Insurance Group shall pay Jean Janz this amount for her loss attributable to the actions of Donald Driver Motors, LLC.

Dated at Madison, Wisconsin on June 29, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705-5400
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By: _____
MARK F. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.